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In The

Supreme Court of the United States

October Term, 1985

MICHAEL J. BOWERS,
ATTORNEY GENERAL OF GEORGIA,

Petitioner,

v.

MICHAEL HARDWICK, AND
JOHN AND MARY DOE,

Respondents.

ON WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS

BRIEF OF AMICI CURIAE

THE PRESBYTERIAN CHURCH (U.S.A.)
THE PHILADELPHIA YEARLY MEETING OF FRIENDS
THE AMERICAN FRIENDS SERVICE COMMITTEE
THE UNITARIAN UNIVERSALIST ASSOCIATION
OFFICE FOR CHURCH AND SOCIETY OF THE UNITED CHURCH OF CHRIST
THE RIGHT REVEREND PAUL MOORE, JR

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INTEREST OF AMICI CURIAE[1]

As religious bodies, our ministry compels us to oppose all forms of discrimination. For this reason we support the position of the respondent, Michael Hardwick, and seek to present our basis for that support as Amici Curiae. Individually our interests are these:

THE PRESBYTERIAN CHURCH (U.S.A.) is a religious body composed of more than 3,100,000 members, organized into approximately 11,600 congregations in every state and the Commonwealth of Puerto Rico. Its General Assembly has officially declared its support for "the optimal exercise of private moral judgment and choices in matters related to the sexual sphere of life," and urged its governing bodies and congregations to support and give leadership to the "elimination of laws governing the private sexual behavior of consenting adults." While the General Assembly does not bind the consciences of individual members, its actions are considered the most representative statements of the denomination as a whole. This brief is filed in furtherance of that statement.

PHILADELPHIA YEARLY MEETING is a religious body with local congregations ("Meetings") within Pennsylvania, New Jersey, Delaware and Maryland. It has created a committee on the civil rights of homosexuals to assist local Meetings in responding to the needs of homosexual members and to participate in the effects of community groups to protect the rights of homosexual people. In 1973 Philadelphia Yearly Meeting minuted its support for this work.[2]

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[1]Counsel of record for all parties have consented to the filing of this brief. Pursuant to Rule 36, letters of consent have been filed with the Clerk of this Court.

[2]*See* Statement of Philadelphia Yearly Meeting of Friends, Appendix A.

AMERICAN FRIENDS SERVICE COMMITTEE has been active since 1917 in work of humanitarian relief and service, reconciliation among nations and peoples and programs to overcome discrimination and oppression. The AFSC carries out its work on behalf of the several branches of the Religious Society of Friends. Friends' belief in the worth of all persons in the sight of God has led the Committee to commit a significant portion of its resources to deal with those aspects of our society which result in exclusion, denial of rights or diminuation of civil liberties. In 1976, the AFSC Board affirmed its respect and loving concern for its homosexual and bisexual committee and staff members, and minuted its support of the civil and human rights of homosexual persons. AFSC has initiated actions to implement this concern through staffing policies and program activities designed to raise awareness in the larger community of the problem of discrimination based on sexual orientation, recognizing that such discrimination harms both its direct victims and the community as a whole.

JOINT STATEMENT OF FRIENDS. Both the American Friends Service Committee and the Philadelphia Yearly Meeting of the Religious Society of Friends have a vital interest in this litigation because its resolution will affect members and constituents and because of Friends' basic belief in the infinite worth of each human being. Both groups seek to express the belief of Friends, but no group can speak for all Friends.

THE UNITARIAN UNIVERSALIST ASSOCIATION is an association of over 1,000 member churches across the United States with a membership in excess of 100,000; its intervention here is based upon its commitment to protect against infringement by governmental authorities of the First Amendment rights of all persons.

OFFICE FOR CHURCH AND SOCIETY OF THE UNITED CHURCH OF CHRIST is an established instrumentality of the United Church of Christ, a national christian fellowship. Among other responsibilities the Office for Church and Society is charged with assisting the Church's mission as it pertains to social education and action. Its interest in this case stems from the action of General Senate of the United Church of Christ (the representative body of the denomination) in urging all of its instrumentalities to work for the decriminalization of private sexual acts between consenting adults.

THE RIGHT REVEREND PAUL MOORE, JR. is the Bishop for the Episcopal Diocese of New York. Bishop Moore is the highest governing official of the Church in the Diocese and is the chief liturgical officer in the Diocese. Ultimate spiritual questions are left to the discretion of the Bishop, within the guidelines established by Common Law. His participation in the brief is as an individual concern for securing the civil rights of all persons, including homosexuals.

SUMMARY OF ARGUMENT

Georgia asserts that it has a compelling interest in regulating intimate sexual expression by consenting adults within the confines of a private home. Our Constitution, our traditions as a people, and this Court's prior decisions declare that the intimate association of consenting adults in the privacy of the home is a constitutionally protected activity. Therefore, the State must go beyond mere assertion of an interest. It must demonstrate the nature of its asserted interest; it must show *why* it is imperative that the private sexual expression of consenting adults be made a felony.

Georgia advances but one justification for criminalizing consensual sodomy: the presumed mandate of "traditional moral values." However, the moral character of unorthodox sexuality is the subject of ongoing controversy, even among the religious groups who presumably define and promote "traditional moral values." To the extent there is any consensus concerning alternative forms of sexual expression, heterosexual or homosexual, it is that private sexual conduct is a matter fundamentally committed to individual moral choice. Because we do not understand the full mystery of human sexuality, and because we are unwilling to condemn that which we do not understand, we believe as a matter of ethics that characterizing consensual sodomy as immoral is unwise. Because there is no consensus among the people of Georgia or of this nation that this conduct is manifestly wrong or dangerous or evil, the proscription of unorthodox sexuality by criminal statute is clearly wrong. Criminal laws that usurp the role of individual moral choice in the context of private consensual sexual expression between adults may not rely for their justification on vague invocations of "traditional moral values." They must stand or fall on their intrinsic necessity, or lack thereof, to the public welfare.

No legitimate basis in contemporary morality justifies making private consensual sodomy a crime. The only relevant moral mandate involved is the fundamental right of an individual to make decisions in matters of private intimate sexual expression without undue interference from the State. Because it contravenes this principle, Georgia's sodomy law is a presumptively impermissible intrusion upon intimate association and the sanctity of the home. The State should be made to explain the compelling interest it asserts.

ARGUMENT

I. O.C.G.A. § 16-6-2 Intrudes Upon Established Rights Of Intimate Association And The Sanctity Of The Home.[3]

The statute at issue in this case provides:

> (a) A person commits the offense of sodomy when he performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another. . . .
>
> (b) A person convicted of the offense of sodomy shall be punished by imprisonment for not less than one nor more than twenty years.

O.C.G.A. § 16-6-2 (1984).

This law is without limitation. It contains no limitation as to place, and no limitation as to marital status. It criminalizes heterosexual and homosexual association. It makes acts committed in the privacy of the home as culpable as acts committed in the most public place. Its penalty is draconian. Most significantly, the law serves no apparent public interest.

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[3]The evolution and application of the rights of intimate association and the sanctity of the home are carefully examined in the brief of the respondent, Michael Hardwick, and in the briefs of other amici curiae submitted in support of the respondent. In the interest of brevity, we refer the Court to these arguments. This brief will identify the constitutional protections which are implicated by Georgia's sodomy law in summary form. We are more concerned with showing this Court that there exists no consensus of moral opinion which would justify the presumptive validity of such a statute.

A. Georgia's Sodomy Statute Intrudes Upon The Freedom of Intimate Association.

Twenty years ago, the Court confronted a constitutional challenege to Virginia's miscegenation statute. *Loving v. Virginia*, 388 U.S. 1 (1967). At that time, sixteen states still had laws criminalizing interracial marriages. *Loving*, 388 U.S. at 6. In support of this criminal sanction, Virginia asserted a then-popular view that sexual contact between blacks and whites was immoral.[4] The Court rejected Virginia's appeal to traditional moral values and struck the statute down on due process and equal protection grounds. Its landmark decision established that states may not constitutionally interfere with private and consensual sexual association on the basis of a majoritarian moral preference.

Twenty years later, Georgia has resurrected the same arguments the Court rejected in *Loving*. Proclaiming its mandate to enforce "traditional moral values," Georgia now asks leave to disregard the constitutional limits on state power to criminalize private sexual association defined by this Court's decision over the past twenty years.

In *Griswold v. Connecticut*, 381 U.S. 479 (1965), this Court held that the State of Connecticut could not constitutionally forbid the use of contraceptives because the law by which the State sought to do so was incapable of being enforced in a way which would not interfere with the mari-

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[4]The Virginia trial judge who had upheld the statute articulated the perceived "moral" underpinnings of the challenged statute:

> Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.

Loving, 388 U.S. at 3.

tal relationship. The association of marriage was protected within a zone of privacy—an essential corollary to the express guarantees of the Bill of Rights.[5] In *Eisenstadt v. Baird*, 405 U.S. 438 (1972) this Court recognized that the zone of associational privacy extended beyond the marital relationship to encompass the intimate association of two unmarried individuals.[6] In *Roe v. Wade*, 410 U.S. 113 (1973), this Court recognized that a right of privacy surrounds the decision to terminate a pregnancy. *Roe v. Wade*, 14 U.S. at 164.

These cases establish a right to be free from undue state interference in the exercise of individual choice in matters which fundamentally affect our identity as a person. Laws that interfere with such choices must be justified by a clear public imperative.

There can no longer be any doubt that decisions about sexual expression fundamentally affect the whole person. As religious organizations have long recognized: "[m]an does not merely have sexual relations; he demonstrates his true humanity in personal relationships, the most intimate of which are sexual." *Statement on Homosexuality*, Lutheran Church In America, Biennial Convention, 1970, *reprinted in* Homosexuality and Ethics 237 (E. Batchelor ed. 1982).

> The mystery of our sexuality is the mystery of our need to reach out and embrace others, physically

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[5]The reasoning was straightforward. If the marital relationship were not itself protected, the express guarantees of the Bill of Rights which rigidly protect more casual associations would be meaningless. *Griswold*, 381 U.S. at 484-86.

[6]As Justice Brennan stated: "[i]f the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear to beget a child." *Eisenstadt*, 404 U.S. at 453.

> and spiritually. Sexuality expresses God's intention that we find our authentic humanness in relatedness to others.
>
> . . .
>
> Sexuality, then, involves much more than what we *do* with our genital organs. It is *who we are* as body-persons who experience the emotional, cognitive, and physical need for intimate communication with others.

Faith, Ethics, and Sexuality, Human Sexuality—A Preliminary Study 87, 87 The United Church Board for Homeland Ministries, by commission of the 1975 General Synod of the United Church of Christ (1977).

Michael Hardwick, by seeking the freedom to express his sexuality with another like-minded and consenting adult in the privacy of his own home, is not seeking unfettered sexual autonomy. He is invoking the right of one human being to associate intimately with another like-minded human being. It is this *association* which deserves constitutional guarantees. The coincidental character of that association as homosexual should not remove the protections which *Loving*, *Griswold*, *Eisenstadt*, and *Roe* established.[7]

If there is any difference between this case and the other right of privacy cases, however, it lies in the direct impact of the burden imposed on intimate association. In the contraception cases, the challenged regulation did not forbid the intimate association itself, but merely the provision of contraceptives which would make sexual acts less likely to result in pregnancy or disease. The abortion statutes considered in *Roe* made obtaining an abortion

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[7]*See, e.g.*, Karst, The Freedom of Intimate Association, 89 Yale L. J. 624, 626 (1980).

more difficult by penalizing the one who performed the abortion—in the usual case, not the person exercising the protected choice. In contrast, Georgia's law declares that a person who chooses to engage in intimate association involving sodomy may be imprisoned for not less than one and not more than twenty years. This proscription not only burdens the exercise of constitutional right, it obliterates it. It is the proper function of cases like *Loving*, *Griswold*, *Eisenstadt* and *Roe* to demand justification of such a law. *Carey v. Population Services International*, 431 U.S. 678, 705 (1977) (Powell, J., concurring); *Bellotti v. Baird*, 428 U.S. 132, 147 (1976).

B. Section 16-6-2 Also Implicates The Sanctity Of The Home.

Georgia's proscription of sodomy reaches conduct no matter where it occurs. Acts in the privacy of one's own home are as culpable as acts in the most public place. For this reason, as well, the statute is presumptively improper.

In *Payton v. New York*, 445 U.S. 573, 601 (1980), this Court recognized a fundamental difference between the power of the State to effect its purposes in the public domain and its power to enter the confines of a private home for those same purposes. *Payton*, 445 U.S. at 589-590. *Stanley v. Georgia*, 394 U.S. 557 (1969), established that governmental power to regulate the viewing of pornography does not extend into the privacy of the home. *Stanley*, 394 U.S. at 565.

Both *Payton* and *Stanley* recognize a zone of privacy. It is a zone defined by location—the private home—rather

than by subject matter. Acts occurring within the home receive constitutional protections analogous to those accorded the marital relationship, the contraceptive decision, and the abortion decision. The reason for this similarity is the common source of all privacy rights: the fundamental "right to be let alone." *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

Georgia's sodomy law contravenes locational privacy rights. In a place where the State may not regulate the viewing of pornography, it may not, without a compelling interest, proscribe the sexual expression of two consenting adults.[8] Georgia should be made to come forward to prove its asserted interest is sufficiently compelling to overcome this constitutional prohibition.

II. The Mere Assertion Of "Traditional Moral Values" Is No Longer Adequate Justification For Making Private Consensual Sexual Expression A Felony

A. There Is No Contemporary Consensus About The Objective Morality Of Sexual Unorthodoxy.

The sole justification Georgia advances for making consensual sexual expression a felony is "traditional

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[8]Borrowing from, and adapting Justice Marshall's opinion in *Stanley*, it is almost as if:

> In the face of these traditional notions of individual liberty, Georgia asserts the right to protect the individual's mind from . . . [the concept of homosexuality]. We are not certain that this argument amounts to anything more than the assertion that the State has the right to control the moral content of a person's thoughts.

Stanley v. Georgia, 394 U.S. at 565 (footnote omitted).

moral values." In so doing, the State would have this Court assume as a felt truth its assertion that sexual unorthodoxy, in particular sodomy as defined by the State statute, is intrinsically wrong or dangerous or evil.

Such an assumption is no longer valid in light of contemporary experience. Amici do not contest the power of the State of Georgia to regulate actions directly affecting the public. Sexual acts in a public place are within the regulatory power of the State. Georgia's criminal code proscribes those acts.[9] Similarly, the State may prohibit sexual acts with children, and has done so.[10] The State

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[9]O.C.G.A. § 16-6-8 (1985), outlawing public indecency, provides as follows:

> A person commits the offense of public indecency when he performs any of the following acts in a public place and, upon conviction thereof, shall be punished as for a misdemeanor:
>
> (1) An act of sexual intercourse;
>
> (2) A lewd exposure of the sexual organs;
>
> (3) A lewd appearance in a state of partial or complete nudity; or
>
> (4) A lewd caress or indecent fondling of the body of another person.

[10]O.C.G.A. § 16-6-4 (1985), prohibiting molestation of children:

> (a) A person commits the offense of child molestation when he does any immoral or indecent act to or in the presence of or with any child under the age of 14 years with intent to arouse or satisfy the sexual desires of either the child or the person . . .
>
> (c) A person commits the offense of aggravated child molestation when he commits an offense of child moles-

(Continued on following page)

may also, of course, prohibit sexual acts accomplished by force or imposition, and has done so.[11] But there is a fundamental difference between these sexual acts and the act of private consensual sexual expression between like-minded adults. That difference lies in the way in which we as a society balance individual liberty against public necessity, and in our commitment as a people to ensure "the right to be let alone." *Olmstead*, 277 U.S. at 478. As a society we believe that violence, including sexual violence, against women or men, heterosexual or homosexual, is abhorrent; we believe that children should be protected from overreaching and their own incompletely formed judgment; we believe that the State has a legitimate interest in maintaining the public order. There is a unified consensus on the objective morality of these aspirations.

(Continued from previous page)

tation which results in physical injury to the child or involves an act of sodomy.

O.C.G.A. § 16-6-3 (1985) prohibits statutory rape which is defined as follows:

> (a) A person commits the offense of statutory rape when he engages in sexual intercourse with any female under the age of 14 and not his spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the female.

[11]O.C.G.A. § 16-6-1 (1985) prohibits rape as follows:

> (a) A person commits the offense of rape when he has carnal knowledge of a female forcibly and against her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ.

The remaining portion of the statute at issue in this case, O.C.G.A. § 16-6-2 (1985), prohibits aggravated sodomy as follows:

> (a) . . . A person commits the offense of aggravated sodomy when he commits sodomy with force and against the will of the other person.

By contrast, there is no such certainty about the objective immorality of sexual unorthodoxy, homosexual or heterosexual. This question has stirred controversy for three decades. As a result of this controversy, statutes comparable to Georgia's sodomy law have been repealed or struck down in twenty-four states. Brief of Petitioner at 23. Likewise, the Model Penal Code recommends the decriminalization of consensual sodomy. In 1973, the House of Deputies of the American Bar Association authored a resolution which urged state legislatures to repeal "all laws which classify as criminal conduct any form of non-commercial sex conduct between consenting adults in private, saving only those portions which protect minors or public decorum." Statement of the House of Deputies, American Bar Association (1973), *reprinted in* Homosexuality and Ethics 242 (E. Batchelor ed. 1982). And on November 1, 1985, the Georgia Court of Appeals ruled that the sexual preference of a party to a contract dispute was irrelevant on any issue and was properly excluded from evidence. *Northern Assurance Co. of America v. Roll*, Nos. 70652, 70667, slip op. (Ga. Ct. App. Nov. 1, 1985).

These isolated events provide no answer to the question of sexual unorthodoxy's intrinsic morality or immorality. They do show, however, that there is no longer any unified opinion on that subject among the people of this country. They further show that making consensual private sodomy a felony is not so clearly mandated by public necessity that the State of Georgia may enforce such a law by merely asserting its power to do so. *See Zablocki v. Redhail*, 434 U.S. 374, 399 (Powell, J., concurring). In the absence of any unified view on sexual un-

orthodoxy, Georgia cannot justify intrusive regulation of O.C.G.A. § 16-6-2 by mere assertion. Rather, as Virginia was required to do in *Loving*, Georgia must explain the compelling interests giving rise to this statute.

B. Contemporary Consensus Requires The Decriminalization Of Consensual Sodomy.

In contrast to contemporary uncertainty about the objective morality of alternative means of sexual expression, heterosexual or homosexual, there is strong agreement, even among those who deem such conduct objectively immoral, that consensual unorthodox sexual acts should be decriminalized.[12] Phrased alternatively, this strong consensus evidences a new aspiration of our people: to enforce tolerance for diversity in our society. There is thus a new kind of moral value at work.

> [A] view is not a moral one merely because it is passionately and sincerely held, or because it has a certain emotional depth, or because it is the view of one's father or mother or clan, or because it is conventional.

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[12]For example, Robert Gordis, a Professor of Theology and the editor of *Judaism* magazine, argues that homosexuality is not only immoral, but intrinsically evil. And yet he goes on to state:

> [A] basic caution is in order. . . . [H]omosexual activity, when carried on by adults in private and violating no one's wishes and desires, should be decriminalized on the statute books. The practice belongs to the rabbinic category of an act that is "free from legal punishment (by human agency), but forbidden." The homosexual in contemporary society has a just claim to be free from legal penalties and social disabilities.

Gordis, Homosexuality and the Homosexual, in *Homosexuality and Ethics*, 58, 60 (E. Batchelor ed. 1982). *See also* Statements of Policy, Appendix A.

> On the contrary, the moral point of view affords an impartial way of assessing whether any of these beliefs, which may often press one to action, is in fact worthy of ethical commitment.
>
> In similar ways and for similar reasons, not everything invoked by democratic majorities as justified by "public morality" is, in fact, morally justified. From the moral point of view, we must always assess such claims by whether they can be sustained by the underlying structure of moral reasoning—by principles of mutual respect, universalization, and minimization of fortuity. In this regard, constitutional morality is at one with the moral point of view.
>
> . . .
>
> This kind of moral analysis affords definite constraints on what may permissibly and justifiably be regarded as an ethical belief. In an area where public attitudes about public morality are, in fact, demonstrably not justified by underlying moral constitutional principles, laws resting on such attitudes are constitutionally dubious. There being no defensible moral principle to sustain state interference, the matter is not a proper object of state concern.

Richards, *Sexual Autonomy and The Constitutional Right to Privacy: A Case Study in Human Rights and the Unwritten Constitution*, 30 Hastings L.J. 957, 977-78 (1979). It is this view—that public morality demands the State concern itself only with those areas in which it has a demonstrable interest in regulating—that represents the emerging moral consensus of our society. It is this view which we have adopted in our statements of official policy,[13] and it is this view which we, as amici, recommend to the Court.

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[13]See Appendix A.

We would merely require the State to explain the demonstrable public interest it asserts, and to show why that interest requires making private consensual sexual expression between two adults a felony.

———o———

CONCLUSION

O.C.G.A. § 16-6-2 intrudes upon freedoms which this Court and our Constitution have identified as fundamental to our way of life as a free people. For this reason, the State must justify the public necessity it asserts in defense of its sodomy law and it must go beyond the bald assertion of "traditional moral values" in doing so.

Invocation of "traditional moral values" no longer adequately justifies making private consensual sexual acts a felony because contemporary experience teaches that there is no broad andate which would condemn this conduct. To the contrary, there is a strong moral argument and an emerging consensus that prohibition of sexual unorthodoxy by criminal law is itself immoral and an improper exercise of legislative power. At the very least, however, the State should be made to explain its claimed public imperative to the contrary.

Finally, as amici, we seek to show the Court that we and other Christian and Jewish religious organizations, in pursuit of a shared ministry to eradicate discrimination, have articulated policies contrary to the "traditional moral values" asserted by the State in this case.

For all of these reasons, the State should be required to demonstrate that it has a compelling interest in regulating consensual sodomy through a law which makes that conduct a felony. The decision of the Eleventh Circuit should be affirmed.

Respectfully submitted,

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APPENDIX A

EXCERPTS FROM OFFICIAL MINUTES, PRONOUNCEMENTS, POLICY STATEMENTS AND OTHER GENERAL DECLARATIONS OF PURPOSE OF AMICI HEREIN.

As religious bodies, we are compelled in our ministry to work for the end of discrimination in any form. We are participating in this case as *amici* because we believe that the Georgia sodomy law is an unwarranted intrusion upon the fundamental rights of those committed to our pastoral care and of all persons in this nation, irrespective of their sexual orientation, beliefs, or practices. We wish to demonstrate to this Court that many denominations, whether or not they believe that particular sexual practices may be moral or immoral, nevertheless firmly believe that regulation of the private sexual expression of two consenting adults is wrong.

PRESBYTERIAN CHURCH (U.S.A.):

Statement from General Assembly Minutes of 1970:

> Believing that the law should provide for the optimal condition of physical and mental health, and should allow for the optimal exercise of private moral judgment and choices in matters related to the sexual sphere of life; and recognizing that religious convictions held by individuals should not be imposed by law upon the secular society; the 182nd General Assembly (1970):
>
> . . . (4) calls upon judicatories and churches to support and give leadership in movements toward the elimination of laws governing the private sexual behavior of consenting adults . . .

Statement from General Assembly Minutes of 1978:

The General Assembly

> . . . (12) reaffirms the need, expressed by the 182nd General Assembly (1970), for Presbyterians to work for the decriminalization of private homosexual acts between consenting adults, and calls for an end to the discriminatory enforcement of other criminal laws against homosexual persons.

THE PHILADELPHIA YEARLY MEETING OF FRIENDS:

Minutes of the Philadelphia Yearly Meeting Friends, 1973:

> We should be aware that there is a great diversity in the relationships that people develop with one another. Although we neither approve nor disapprove of homosexuality, the same standards under the law which we apply to heterosexual activities should also be applied to homosexual activities.
>
> Since persons who engage in homosexual activities suffer serious discrimination in employment, housing and the right to worship, we believe that civil rights laws should protect them. In particular we advocate the revision of all legislation imposing disabilities and penalties upon homosexual activities.

THE AMERICAN FRIENDS SERVICE COMMITTEE: Minutes of the Board of Directors of the AFSC, January 18-19, 1976:

> The AFSC Board of Directors supports the civil and human rights of homosexual and bisexual persons, and commits itself to implement this concern.
>
> It is the Board's policy to be non-discriminatory in personnel matters regardless of race, religion, class, sex, or sexual preference.
>
> The Board affirms its respect and loving concern for its homosexual and bisexual committee and staff members and expresses its recognition of their valuable participation within the AFSC.
>
> The Board recognizes that gay persons suffer not only from denial of legal rights and discrimination in

employment but also from stereotyping from cruel jokes and from condescension.

The Board asks the Chairman in consultation with the Executive Secretary to devise means to implement our concerns with the rights and dignity of gay persons within the AFSC . . .

In making this statement the Board recognizes that we are all struggling to find non-exploitive and more fully loving ways of relating to each other. This is difficult in a society in which sexuality has often been used as a means for domination and control, rather than to deepen and strengthen loving relationships. In this search we will all need to call upon our most vital spiritual resources to grow together in the new understandings that will be required.

THE UNITARIAN UNIVERSALIST ASSOCIATION:

Discrimination Against Homosexuals And Bisexuals—1970:

RECOGNIZING THAT:

1. A significant minority in this country are either homosexual or bisexual in their feelings and/or behavior;

2. Homosexuality has been the target of severe discrimination by society and in particular by the police and other arms of government;

3. A growing number of authorities on the subject now see homosexuality as an inevitable sociological phenomenon and not as a mental illness;

4. There are Unitarian Universalists, clergy and laity, who are homosexuals or bisexuals;

THEREFORE BE IT RESOLVED: That the 1970 General Assembly of the Unitarian Universalist Association:

1. Urges all peoples immediately to bring an end to discrimination against homosexuals, homosexual-

ity, bisexuals, and bisexuality, with specific immediate attention to the following issues:

a. private consensual behavior between persons over the age of consent shall be the business only of those persons and not subject to legal regulations;

b. a person's sexual orientation or practice shall not be a factor in the granting or renewing of federal security clearance, visas, and the granting of citizenship or employment;

2. Calls upon the UUA and its member churches, fellowships, and organizations immediately to end all discrimination against homosexuals in employment practices, expending special effort to assist homosexuals to find employment in our midst consistent with their abilities and desires;

3. Urges all churches and fellowships, in keeping with our changing social patterns, to initiate meaningful programs of sex education aimed at providing a more open and healthier understanding of sexuality in all parts of the United States and Canada, and with the particular aim to end all discrimination against homosexuals and bisexuals.

THE RIGHT REVEREND PAUL MOORE, JR., Bishop for the Episcopal Diocese of New York:

On May 11, 1974, Bishop Moore addressed the 196th Convention of the Episcopal Diocese of New York and stated:

> Homosexuality is a condition which is given, not chosen. They, like every other minority, deserve to receive equal opportunity and justice before the law . . .

Quoting a July 1973 Report of the Commission on Homosexuality of the Diocese of Michigan, Bishop Moore added,

> We believe the church is that agency in history called upon to bear witness to the all embracing love of God. We have no evidence that this love does not include all homosexuals.

APPENDIX B

EXCERPTS FROM STATEMENTS OF OTHER CHRISTIAN AND JEWISH ORGANIZATIONS

THE EPISCOPAL CHURCH:

Resolution "On Homosexuality" of the Executive Council of the Episcopal Diocese of Michigan, May, 1974:

> 1. The Church should take steps to create an atmosphere of openness and understanding about human sexuality and particularly about homosexuality . . .
>
> 4. The Church's concern for individuals and a just social order should lead it to speak publicly for repeal of all laws which make criminal offenses of private, voluntary sex acts between mature persons. The Church ought also to oppose police harassment of homosexuals and investigatory practices which sometimes verge upon entrapment. Likewise the Church should speak publicly on behalf of homosexual persons in the area of civil rights' legislation. There should be no discrimination against any person and housing, employment, business services, or public accommodations on the grounds of sexual orientation.

Resolution of the Convention of the Episcopal Diocese of New York, May 11, 1974:

> *Whereas*, the Bishop of New York has called for justice and equal opportunity for homosexuals, and
>
> *Whereas*, the Bishop has given his support to a bill before the City Council designated as Intro. 2 as an effective means toward this goal, and

> *Whereas*, this Convention, without making any judgment on the morality of homosexuality, agrees that homosexuals are entitled to full civil rights,
>
> *Now therefore be it resolved*, that this Convention supports laws guaranteeing homosexuals all civil rights guaranteed to other citizens . . .

*Statement on Homosexuality, Protestant Episcopal Church in the U.S.A., General Convention, 1976:**

> Resolved, that it is the sense of this General Convention that homosexual persons are children of God, who have a full and equal claim with all other persons upon the love, acceptance, and pastoral concern and care of the Church.
>
> This General Council expresses its conviction that homosexual persons are entitled to equal protection of the law with all other citizens, and calls upon our society to see such protection as provided in actuality.

THE LUTHERAN CHURCH IN AMERICA:

Statement on Sex, Marriage, and Family, Adopted by the Fifth Biennial Convention of the Board of Social Ministry, The Lutheran Church in America, Minneapolis, Minnesota, June 25—July 2, 1970:

> Human sexuality is a gift of God for expression of love and generation of life. As with every good gift, it is subject to abuses which cause suffering and

debasement. In the expression of man's sexuality, it is the integrity of his relationships which determines the meaning of his actions. Man does not merely have sexual relations; he demonstrates his true humanity and personal relationships, the most of intimate of which are sexual.

Scientific research has not been able to provide conclusive evidence regarding the causes of homosexuality. Nevertheless, homosexuality is viewed biblically as a departure from the heterosexual structure of God's creation. Persons who engage in homosexual behavior are sinners only as are all other persons —alienated from God and neighbor. However, they are often the special and undeserving victims of prejudice and discrimination in law, law enforcement, cultural mores, and congregational life. ***In relation to this area of concern, the sexual behavior of freely consenting adults in private is not an appropriate subject for legislation or police action.*** It is essential to see such persons as entitled to understanding and justice in church and community. (emphasis supplied)

THE AMERICAN LUTHERAN CHURCH:

*Statement on Homosexuality, The American Lutheran Church, Standing Committee for the Office of Research and Analysis, 1977:**

The Church need not be caught up in the conflicting theories as to how wide spread homosexuality is, the factors which cause or foster homosexuality, and whether it is an illness, an arrested state of sexual development, a form of deviant behavior, or sex-

ual expression of human nature. These are matters for the various scientific disciplines to debate and resolve. *The Church, however, is concerned that some human beings created in God's image are involved in homosexual behavior, that many people are hurting because of their own homosexuality or that of a loved one, and that the scriptures speak to the entire issue.*

We believe that taken as a whole, the message of scripture clearly is that:

a. Homosexual behavior is sin, a form of idolatry, a breaking of the natural order that unites members of the human community;

b. Homosexual behavior is contrary to the new life in Christ, a denial of the responsible freedom and service into which we are called through baptism;

c. God offers the homosexual person, as every person, a vision of the wholeness he intends, the assurance of His grace and His healing and restoration for the hurting and broken.

Nevertheless, we recognize the cries of our homosexual brothers and sisters for justice in the arena of civil affairs. We cannot endorse their call for legalizing homosexual marriage. Nor can we endorse their conviction that homosexual behavior is simply another form of acceptable expression of natural erotic or libidinous drives. *We can, however, endorse their position that their sexual orientation in and of itself*

should not be a cause for denying them their civil liberties.

THE UNITED METHODIST CHURCH:

*Statement on Homosexuality, The United Methodist Church, the Quadrennial Conference, 1976:**

> Homosexuals no less than heterosexuals are persons of sacred worth, who need the ministry and guidance of the Church in their struggles for human fulfillment, as well as the spiritual and emotional care of a fellowship which enables reconciliating relationships with God, with others and with self. Further we insist that all persons are entitled to have their human and civil rights ensured, though we do not condone the practice of homosexuality and consider this practice incompatible with Christian teaching.

THE UNITED CHURCH OF CHRIST:

Resolution on Homosexuals and the Law, Adopted by the Council for Christian Social Action of The United Church of Christ, April 12, 1969:

> Whereas homosexual practices between consenting adults in private endanger none of the properly protective functions of civil law; and
>
> Whereas laws against consensual homosexual practices between adults in private violate the right of privacy and are virtually unenforcebale, except through the abhorrent practices of police entrapment and enticement; and
>
> Whereas such laws have no effect on the degree of homosexuality (as indicated by various studies abroad showing that homosexuality exists to no greater extent in countries without such laws than in the United States); and
>
> Whereas present laws and government practices regarding employment and military service of homosexuals are based on false assumptions about the na-

ture of homosexuality in general and the danger of homosexuals to society in particular;

Therefore, the counsel for Christian Social Action (CCSA) hereby declares its opposition to all laws which make private homosexual relations between consenting adults a crime and thus urges their repeal.

Resolution Deploring the Violation of Civil Rights of Gay and Bisexual Persons, Adopted by the Eleventh General Synod, United Church of Christ, Washington, D.C., July 1-5, 1977:

WHEREAS, the Tenth General Synod declared by an overwhelming majority its commitment to an end to discrimination relating to sexual or affectional preference; and

WHEREAS in recent months we have witnessed the wide spread violation of the civil rights and gay and bisexual persons in the name of Christianity; and

WHEREAS, gay and bisexual persons have become victims of violence, including murder, allegedly as a result of fanatical prejudice kindled recently by those who publicly espouse and exploit irrational fear; and

WHEREAS, the recent referendum in Dade County, Florida represents a new reactionary movement which may eventually erode the civil liberties of all; and

WHEREAS, the United Church of Christ in its heritage and in its theology has a commitment to compassion for, and liberation of, oppressed minorities;

THEREFORE, BE IT RESOLVED, that this Eleventh General Synod:

1. Reaffirms the action of the Tenth General Synod in its pronouncement on Civil Liberties Without Discrimination Relating to Affection or Sexual Preference;

2. Deplores the use of scripture to generate hatred, and the violation of civil rights of gay and bisexual persons; and

3. Calls upon individual members, local churches, Associations, Conferences and Instrumentalities to continue to work for the enactment of civil rights legislation at the federal, state and local levels of government.

THE ROMAN CATHOLIC CHURCH:

Resolution on Civil Rights of Homosexual Persons by the National Federation of Roman Catholic Priests' Councils, House of Delegates Meeting, San Francisco, California, March 17-21, 1974:

WHEREAS, a significant minority in this country is homosexual in orientation and/or behavior; and

WHEREAS, gay persons have been the target of severe discrimination by society and in particular by the legal branch and other arms of government; and

WHEREAS, present laws and governmental practices regarding employment and prosecution of homosexuals are based on certain assumptions about the nature of homosexuality in general and the danger of homosexuals in particular; and

WHEREAS, a number of gay persons having children of their own, or involved in the education of children are many times denied the opportunity to raise and educate their children because they are homosexual in orientation, in spite of their parental or professional abilities;

BE IT RESOLVED, that the National Federal of Priests' Councils hereby declare [sic] its opposition to all civil laws which make consensual homosexual acts between adults a crime and thus urges their repeal; and

BE IT FURTHER RESOLVED, that the NFPC also express its opposition to homosexuality as such being the basis of discrimination against homosexuals in employment, governmental service, housing and child rearing involving natural or adoptive parents.

CHRISTIAN CHURCH (DISCIPLES OF CHRIST):

*Statement on Homosexuality, Christian Church (Disciples of Christ), General Assembly, Study Document, 1977:**

> . . . The standards of membership in the christian church (Disciples of Christ) have always rested on confession of faith in Jesus Christ and baptism. Its standards have been "inclusive" rather than "exclusive." In support of these it has appealed to the relationships of Jesus which were inclusive, often, in fact, deliberately directed to those whom society had demeaned and cast aside. It has never acknowledged barriers to fellowship on the basis of dogma or life style. By these principles, routed in biblical faith, it is difficult to point to any basis upon which homosexual persons might be excluded from membership.
>
> Acknowledging . . . the wide differences of opinion, there does seem to be a minimal consensus to which a church can strive: homosexuals are persons whom God created, loves and redeems and seeks to set within the fellowship of faith communities to be ministered to and to minister. The church can affirm that God's grace does not exclude persons of differing lifestyles or sexual preferences, nor does the church which is enlightened by the Holy Spirit. Homosexuals may be included in the fellowship and membership of the community of faith where they are to love and be loved and where their gifts of ministry are to be welcomed.

THE NATIONAL COUNCIL OF CHURCHES OF CHRIST:

Resolution on Civil Rights Without Discrimination as to Affectional or Sexual Preference, National Council of the Churches of Christ:

> The National Council of the Churches of Christ has always held that, as a child of God, every person is endowed with worth and dignity that human judgment cannot set aside. Therefore every person is entitled to equal treatment under the law.

For this reason, the National Council of the Churches of Christ has endeavored to ensure for all persons regardless of race, class, sex, creed, or place of national origin their full civil rights. To this list the Governing Board now adds affectional or sexual preference. Discrimination based on any of those criteria is morally wrong.

Many persons, including some of the members and pastors of some of our churches, have been and are being deprived of their civil rights and full and equal protection of the law because of their affectional or sexual preference.

THEREFORE:

1. The Governing Board reiterates the Christian conviction that all persons are entitled to full civil rights and equal protection and to the pastoral concern of the church.

2. The Governing Board urges its member churches and their constituencies to work to ensure the enactment of legislation at the national, state and local levels that would guarantee the civil rights of all persons without regard to their affectional or sexual preferences.

3. The Governing Board asks the General Secretary to request the appropriate units of the Council to gather for the Board's information work already done or in process in the communions on this subject and to explore the most effective ways of relating the theological insights of the churches on the effects of discrimination and prejudice into the lives of homosexual persons in the community and the churches.

THE AMERICAN JEWISH CONGRESS:

Resolution Adopted in 1973 by the American Jewish Congress

> As early as 1973, the American Jewish Congress called for decriminalization of homosexuality, and the removal of the cases of consenting adult homosexuals from the criminal justice system, except in cases involving disruption of the public order.

UNION OF AMERICAN HEBREW CONGREGATIONS:

*Statement on Homosexuality, Union of American Hebrew Congregations, General Assembly, 1977:**

> Whereas, the UAHC has consistently supported the civil rights and civil liberties of all persons, and
>
> Whereas, the Constitution guarantees civil rights to all individuals,
>
> Be it therefore resolved that homosexual persons are entitled to equal protection under the law. We oppose discrimination against homosexuals in areas of opportunity, including employment and housing. We call upon our society to see that such protection is provided in actuality.
>
> Be it further resolved that we affirm our belief that the private sexual acts between consenting adults are not the proper province of government and law enforcement agencies.

*Reprinted in Appendix, *Homosexuality and Ethics* 235-42 (E. Batchelor, ed. 1982).